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### *Counsel for Defendants and Nominal Defendant*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SIMONE BLANCHETTE, Derivatively on  
Behalf of Nominal Defendant PAYSIGN, INC.,

Case No.

**Plaintiff,**

V.

MARK NEWCOMER, DANIEL H. SPENCE,  
DAN R. HENRY, QUINN WILLIAMS, JOAN  
M. HERMAN, BRUCE A. MINA, DENNIS  
TRIPPLETT, and MARK ATTINGER,

**NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. §§ 1441, 1446**

## Defendants,

and

PAYSIGN, INC.,

## Nominal Defendant.

Defendants MARK NEWCOMER, DANIEL H. SPENCE, DAN R. HENRY, QUINN WILLIAMS, JOAN M. HERMAN, BRUCE A. MINA, DENNIS TRIPPLETT, and MARK ATTINGER, and Nominal Defendant PAYSIGN, INC. (“Paysign”) (collectively, “Defendants”), by and through their counsel, the law firm of GREENBERG TRAURIG, LLP, file this Notice of Removal Pursuant to 28 U.S.C. §§ 1441 & 1446 from the District Court of Clark County, Nevada, to the United States District Court for the District of Nevada (the “Notice”). In support of removal, Defendants state as follows:

1      **I. BACKGROUND**

2      1.      The above-entitled action was commenced in the Eighth Judicial District Court, in  
 3 and for Clark County, Nevada, Case No. A-23-878793-B, and is pending in that Court (“State  
 4 Court Action”).

5      2.      Simone Blanchette (“Plaintiff”) commenced the State Court Action by filing a  
 6 Verified Shareholder Derivative Complaint (“Complaint”) on October 2, 2023. (A copy of the  
 7 Complaint is attached as **Exhibit A.**)

8      3.      Defendants accepted service of the Complaint and Summons on October 5, 2023.

9      4.      No further substantive or material filings have been made in the State Court Action.

10     5.      The Complaint asserts claims for: (1) Violations of § 10(b) of the 1934 Securities  
 11 Exchange Act, 15 U.S.C. § 78(j), and Rule 10b-5, 17 C.F.R. § 240.10b-5; and (2) derivative claims,  
 12 supposedly brought on behalf of Paysign, for breaches of fiduciary duty, unjust enrichment, and  
 13 gross mismanagement.

14     **II. REMOVAL IS PROPER AND MANDATED UNDER FEDERAL QUESTION  
 15 JURISDICTION**

16     6.      Defendants base removal on 28 U.S.C. § 1441(a), which permits removal from state  
 17 court of any civil action “brought in a State Court of which the district courts have original  
 18 jurisdiction . . . .” This is a civil action in which this Court has original jurisdiction under 28  
 19 U.S.C. § 1331, which provides that the district courts have original jurisdiction over all civil actions  
 20 which arise under the Constitution, laws, or treaties of the United States. In Count One of the  
 21 Complaint, Plaintiff assert a claim under “§ 10(b) of the Exchange Act, 15 U.S.C. § 78(j), and Rule  
 22 10b-5, 17 C.F.R. § 240.10b-5” – a claim arising under federal law.

23     7.      “Section 27 of the Securities Exchange Act of 1934 (Exchange Act) ... grants  
 24 federal district courts exclusive jurisdiction ‘of all suits in equity and actions at law brought to  
 25 enforce any liability or duty created by [the Exchange Act] or the rules or regulations thereunder.’ §  
 26 78aa(a).” *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 376–77 (2016).  
 27 This statute “confers federal jurisdiction when an action is commenced in order to give effect to an  
 28 Exchange Act requirement.” *Id.* at 381; *see also Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S.

1 367, 370 (1996) (“Section 27 of the Exchange Act confers exclusive jurisdiction upon the federal  
 2 courts for suits brought to enforce the Act or rules and regulations promulgated thereunder.”);  
 3 *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1197 (9th Cir. 1988) (Section 10(b) claims are  
 4 subject to “exclusive federal jurisdiction pursuant to 15 U.S.C. § 78aa”).

5 **III. CONCLUSION AND PROCEDURAL REQUIREMENTS**

6 8. Federal law requires that this action be removed to this Court.

7 9. A true and correct copy of this Notice of Removal is being served on all named  
 8 parties that have lodged an appearance in the State Court Action and filed with the Clerk of the  
 9 Eighth Judicial District Court.

10 10. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed  
 11 within thirty (30) days after service of the Complaint.

12 11. This Court is the proper venue for the removal of this action because it is the district  
 13 court of the United States for the district and division embracing the place where the action is  
 14 pending. *See* 28 U.S.C. § 1441(a).

15 12. In accordance with 28 U.S.C. § 1446(d), promptly after filing this Notice of  
 16 Removal, Defendants will give written notice of the removal to all adverse parties and will file a  
 17 copy of this Notice of Removal with the State Court.

18 13. While Defendants do not believe it is relevant to the fact that removal is required  
 19 here as a matter of statute, as a practical matter Defendants wish to inform the Court of the  
 20 following facts: (1) there is an existing securities class action case alleging substantially identical  
 21 facts pending in U.S. District Court for the District of Nevada entitled, *In re Paysign, Inc.*  
 22 *Securities Litigation*, Case No.: 2:20-cv-00553-GMN-DJ, where the Court has already appointed  
 23 lead plaintiff and lead counsel pursuant to the requirements of the Private Securities Litigation  
 24 Reform Act of 1995; and (2) separately, there is an existing derivative lawsuit alleging substantially  
 25 identical facts pending in U.S. District Court for the District of Nevada entitled *Andrzej Toczek vs.*  
 26 *Mark R. Newcomer, et al.*, Case No.: 2:20-cv-01722-JCM-NJK,

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1 Based on the above, Defendants remove the State Court Action to this Court.  
2 DATED this 10<sup>th</sup> of October, 2023.

3 **GREENBERG TRAURIG, LLP**

4  
5 */s/ Jacob D. Bundick*  
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12 *Counsel for Defendants and Nominal Defendant*

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1                   **CERTIFICATE OF SERVICE**

2                   Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that, on the 10<sup>th</sup> day of October, 2023, a  
3 true and correct copy of the foregoing **NOTICE OF REMOVAL OF ACTION PURSUANT TO**  
4 **28 U.S.C. §§ 1441, 1446** was filed electronically via the Court's CM/ECF system. Notice of filing  
5 will be served on all parties by operation of the Court's EM/ECF system, and parties may access  
6 this filing through the Court's CM/ECF system.

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8                   \_\_\_\_\_  
9                   /s/ *Andrea Flintz*  
An employee of Greenberg Traurig, LLP

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1                   **LIST OF EXHIBITS**  
2       1. Exhibit A -- Complaint  
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